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CEMP-EC/ CECW-EP  Engineer Regulation 1180-1-9	Department of the Army U.S. Army Corps of Engineers Washington, DC 20314-1000	ER 1180-1-9  29 October 1997
	Contracts  DESIGN-BUILD CONTRACTING	
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**Contracts**  
**DESIGN-BUILD CONTRACTING**

**1. Purpose.**

This regulation prescribes procedures for the use of design-build contracting by elements of the U.S. Army Corps of Engineers (USACE).

**2. Applicability.**

This regulation applies to all HQUSACE elements, major subordinate commands (MSC), districts, laboratories, and field operating activities (FOA) in the planning and execution of design-build projects, except military family housing and projects using nonappropriated funds (see paragraphs 8.d. and 8.e.).

**3. References.**

Appendix A provides a listing of the references within this ER.

**4. Distribution.**

This regulation is approved for public release, distribution is unlimited.

**5. Explanation.**

a. "Acquisition Strategy" means evaluation of factors indicated in Appendix B as they relate to a project for design and construction, or a summary of the salient acquisition factors from a project's acquisition plan prepared in accordance with FAR.

b. The terms "design," "design-bid-build," and "design-build" are defined in FAR 36.102.

c. "Performance specifications" state the Government's needs and requirements in terms that indicate required results, the criteria for verifying compliance of the specifications, and state the requirements and criteria without stating how to achieve the results.

d. "Prescriptive specifications" (also referred to as "design specifications") explicitly state the design solution in terms of the materials, systems and processes to be used.

**6. Objectives.**

The objectives are the appropriate selection of design-build as one of a variety of methods of contracting available for construction of a project, and the appropriate development and execution of a design-build contract.

**7. Policy.**

a. USACE will continue using the traditional facilities acquisition method of "design-bid-build" as appropriate. Other non-traditional facilities acquisition procedures, including "design-build," will also be considered. Emphasis on efficient delivery of projects is a primary criterion in acquisition planning; it would be a disservice to USACE customers and American taxpayers to do otherwise.

**b.** The responsible USACE command will evaluate applicable contracting methods, including design-build, and implement the most appropriate process. The evaluation should consider factors as indicated in Appendix B, including whether customer requirements have been fully defined, the size and complexity of the project, time constraints, compatibilities and experiences of potential contractors, and the capabilities and experiences of the USACE command with the proposed contracting method.

**c.** USACE commands must work with their customers at the earlier stages of project planning to determine the acquisition strategy and seek the approval as indicated in this ER.

#### **8. Use of Design-Build and Two-Phase Design-Build.**

**a.** FAR 36.104 states that the use of design-bid-build, two-phase design-build, design-build under other FAR Parts (including Parts 14 and 15), and under 10 U.S.C. 2862 is authorized.

**b.** Military services and agencies are specifically authorized by 10 U.S.C. 2862 to enter into design-build contracts for military construction. The authority is limited to a contract award to a single contractor to perform both design and construction of a facility using approved "performance specifications" under a firm-fixed-price contract.

**(1)** Design-Build Instructions (DBI), available as indicated in Appendix A, provide guidance and criteria for using design-build contracting.

**(2)** Architectural and Engineering Instructions (AEI), "Technical Requirements for

Design-Build, Military Construction," available as indicated in Appendix A, provide guidance for preparing technical aspects in a design-build contract request for proposal (RFP) for military construction.

#### **c. Civil Works Design-Build.**

**(1)** Design-build contracting is authorized for Civil Works projects only when:

**(a)** use of design-build contracting is specifically addressed in an executed Project Cooperation Agreement (PCA);

**(b)** construction has been authorized and Construction General (CG) or Missouri River and Tributaries (MR&T) construction funds are used;

**(c)** based on sound acquisition strategy as indicated in Appendix B and the DBI;

**(d)** full funding is available at the time the contract is awarded; and

**(e)** approved by HQUSACE (CECW-ZA through CECW-EP).

**(2)** The use of design-build is unlikely to be appropriate for large, complex civil works projects. However, in the case of a large project authorized for construction, a portion of the project may be a candidate for design-build contracting, e.g., a visitor center in conjunction with a lock and dam project.

**d. Non-Appropriated Fund (NAF) Design-Build.** Authorities, policies, and procedures for NAF projects are prescribed by the authorities having jurisdiction for the respective NAF program; i.e., Army NAF contracting is governed under DoD Instruction 4105.67 supplemented by Army Regulation 215-4 and

other criteria and guidance from the Community Family Support Center (CFSC).

**e.** Military Family Housing. Title 10 U.S.C., Subchapter II, Military Family Housing, Sections 2821 through 2836, provide statutory requirements for family housing. The military services have been using design-build procedures since Fiscal Year 1973. Provisions in this ER do not apply to or change the current processes in the Army Family Housing Program and its implementation. ER 1110-1-104, Family Housing Design, and AEI, Army Family Housing, available as indicated in Appendix B, provide current guidance and criteria for Army projects using design-build procedures.

## **9. Solicitations.**

### **a.** Solicitation methods.

**(1)** FAR 36.303-2 requires use of FAR Part 15 procedures for two-phase design-build contracting.

**(2)** Proper use of other design-build procedures in most cases will require use of FAR Part 15 procedures. Use of two-step sealed bidding as described in FAR Subpart 14.5 might occasionally be appropriate, but use of this method requires award of the contract to the lowest priced technically acceptable offer. The use of sealed bidding, as described in FAR Subparts 14.1 through 14.4, is seldom appropriate, except for small routine projects.

**b.** Defining requirements. Use of design-build contracting requires that the customer define the project's functional requirements, that USACE command define the design technical requirements, and that the solicitation include those fully defined requirements.

**c.** Design-build solicitations and contracts shall be prepared in accordance with EFARS 14.201-1, which prescribes a USACE format for construction documents.

## **10. Procedures.**

### **a.** HQUSACE.

**(1)** The authority to approve the use of all types of design-build contracting is hereby delegated to MSC, except for Civil Works projects. This authority is redelegable to district commands in accordance with the procedures in paragraphs 10.b.(1) and its subparagraphs.

**(2)** The Director of Civil Works oversees planning, programming, and implementation of civil works programs. Procedures to obtain approval by CECW to use design-build on civil works projects are provided by paragraph 10.b.(5).

**(3)** HQUSACE may approve or recommend the use of design-build.

**(4)** Recognizing the need for a USACE focal point for the oversight and development of policy, procedures and guidance related to nontraditional facility acquisition, the Nontraditional Acquisition Team (NAT) has been established in HQUSACE. As part of maintaining the oversight on the use of design-build, the NAT reviews design-build approval requests, reviews the formal procedures for design-build that USACE elements propose for their organization, and tracks the performance of the use of design-build in USACE. The NAT includes members from CECC-C, CECW-E, CEMP-C, CEMP-E, CEMP-M, CEPR-P, and CERE-A in a "corporate" approach. The NAT operates under the general direction of the Deputy Director of Military Programs (CEMP-ZB).

**b. USACE Commands.**

**(1)** MSC and district commands shall develop formal procedures for executing design-build projects. This ER and the DBI provide the foundation for those procedures.

**(a)** Each MSC shall forward their formal procedures for design-build contracting through HQUSACE (CEMP-EA) for CEMP-ZA approval.

**(b)** Each district command shall submit their formal design-build procedures to their MSC for review and approval.

**(c)** Each MSC shall review formal design-build procedures of the district commands in their geographical area of responsibility. District command formal design-build procedures shall be approved by the MSC only when the procedures are determined to be consistent with the Federal Statutes and Regulations, Executive Orders applicable to design-build, consistent with the criteria and guidance referenced in this ER, and consistent with the MSC design-build procedures approved by HQUSACE.

**(d)** Design-build approval authority may be delegated by the MSC to district commands that have MSC approved formal design-build contracting procedures and have demonstrated a good design-build performance record.

**(e)** An information copy of approved district command design-build procedures shall be forwarded by the approving MSC to HQUSACE (CEMP-EA), which will coordinate in HQUSACE with the NAT. HQUSACE should be consulted for advice about unusual and controversial projects.

**(2)** The selection of design-build or any

other contracting method to acquire facilities is the responsibility of the contracting agency, which is USACE as a DoD construction agent. Often a customer may request or approve the use of design-build on their project. The request or approval by a customer to use design-build procedures does not relieve the contracting [design] agency from the responsibility of acquisition planning. USACE commanders are encouraged to take a "corporate" approach similar to HQUSACE, work with their customers at the earliest stages of project planning to jointly develop acquisition strategies and plans (addressing whether design-build contracting is appropriate), and develop a project management plan to implement the design-build process.

**(3)** Any USACE command proposing to use design-build contracting under 10 U.S.C. Section 2862 authority with MCA funds shall request and obtain approval from the MSC designee. The request shall include the acquisition strategy described in Appendix B.

**(4)** Any USACE command proposing to use design-build contracting under 10 U.S.C. Section 2862 authority with military construction funds other than MCA shall request and obtain approval from the MSC designee; for example, approval requests for Air Force projects are submitted to the MSC designee. The request shall be accompanied by the acquisition strategy described in Appendix B, and a copy of the approval from the military service Secretary concerned or the designee.

**(5)** Any USACE command proposing to use design-build contracting for a Civil Works project shall request approval from HQUSACE (CECW-ZA through CECW-EP) and include the acquisition strategy described in Appendix B.

## **11. Information Sources.**

Guidance concerning the use of design-build contracting is contained in the DBI for Military Construction, developed by the NAT representatives in HQUSACE. Specific questions related to design-build discussed in the DBI should be forwarded through the MSC to the following HQUSACE offices:

**a.** CECC-C for legal issues.

- b.** CEMP-C for construction issues.
- c.** CEMP-E for design technical issues.
- d.** CEMP-M for management issues.
- e.** CEPR-P for contracting issues.
- f.** CERE-A for real estate issues.
- g.** CECW-EP for Civil Works issues.

## **FOR THE COMMANDER:**

2 Appendices:  
APP A - References  
APP B - Acquisition Strategy Factors

OTIS WILLIAMS  
Colonel, Corps of Engineers  
Chief of Staff

## APPENDIX A

### REFERENCES

1. Title 10 United States Code, Section 2305a.
2. Title 10 United States Code, Section 2862.
3. Federal Acquisition Regulation (FAR) Parts 14, 15 and 36.
4. Department of Defense FAR Supplement (DFARS) and U.S. Army Corps of Engineers FAR Supplement (EFARS), Parts 14, 15 and 36.
5. Department of Defense Instruction 4105.67, Nonappropriated Fund Procurement Policy.
6. Army Regulation 215-4, Nonappropriated Fund Contracting.
7. Engineer Regulation 1110-3-104, Family Housing Design.
8. Architectural and Engineering Instructions (AEI), Army Family Housing;  
  
    **(a)** Printed copies (as quantities last) obtained from the Center for Standardization of Army Family Housing, Norfolk District Engineer Office (CENAO-DA), 803 Front Street, Norfolk, VA 23510-1096, or  
  
    **(b)** View and print the AEI from the Worldwide Web Internet site for USACE <http://www.hnd.usace.army.mil/techinfo/index.htm>.
9. Architectural and Engineering Instructions (AEI), Technical Requirements for Design-Build, Military Construction;  
  
    **(a)** Printed copies (as quantities last) obtained from the Mobile District Engineer Office (CESAM-EN-MN), P.O. Box 2288, Mobile, AL 36628-0001, or  
  
    **(b)** View and print the AEI from the Worldwide Web Internet site for USACE <http://www.hnd.usace.army.mil/techinfo/index.htm>.
10. Design-Build Instructions (DBI), for Military Construction, may be obtained from three sources:  
  
    **(a)** Printed copies (as quantities last) obtained from the Huntsville Engineering and Support Center (CEHNC-ED-ES), P.O. Box 1600, Huntsville, AL;  
  
    **(b)** View and print the DBI from the Construction Criteria Base (CCB), compact disk based automated information management system obtained through the National Institute of Building Sciences (NIBS), 1201 L Street, NW, Suite 400, Washington, DC 20005-4024, (202) 289-7800.  
  
    **(c)** View and print the DBI from the Worldwide Web Internet site for USACE <http://www.hnd.usace.army.mil/techinfo/index.htm>.



## APPENDIX B

### ACQUISITION STRATEGY FACTORS

In order to facilitate the selection of the appropriate delivery method for a construction project, a sound acquisition strategy must be developed. This appendix provides the key factors to assess salient technical, business, management, and other significant considerations that will control the acquisition method selection. This process does not replace any requirements for a formal acquisition plan, but mirrors it to a smaller degree. An acquisition strategy should be developed with involvement of the customer as a member of the team. The specific content of a project's acquisition strategy will vary, depending on the nature, circumstances, and stage of the acquisition. The issues below are the foundation for a request for approval to use design-build. (Additional guidance for developing a sound acquisition strategy is provided in Appendix A, of the DBI.)

1. Provide information that describes the basic characteristics of the project in terms of the building type and size, or features of operational requirements, estimated and programmed construction costs, occupancy or completion date requirements.
2. Indicate feasible acquisition alternative(s) evaluated for the project, any related in-house efforts and the effects of the processes relative to design agency's current workload. (Is design agency experienced in "Design-Build" procurement with personnel that have the administrative ability to successfully execute a "Design-Build" project?)
3. In the case of "Design-Build," indicate the customer's ability and willingness to participate

throughout the process. (Does the customer agree to participate in a "Design-Build" with an understanding of the commitments required to assist in the development of fully defined solicitation documentation?)

4. Indicate results of a market survey of private industry interest and capability in participating in a "Design-Build" project. This could be accomplished by a Commerce Business Daily (CBD) announcement, or telephonic inquiry. The project size, known risks, project requirements, and acquisition processes under consideration, e.g., design-build, should be discussed in the announcement or inquiry. (Are there sufficient potential contractors in the region with experience and willingness to compete in a design-build project?)

5. Summarize the functional and technical requirements of the project answering key question such as:

- a. Can the project be fully defined, functionally and technically, with performance specifications?

- b. Are there significant conditions that would apply to the project, such as requirements for security of the building(s) and site(s) on Army installation(s); the construction industry's ability or lack of ability to provide the required security design and construction; or requirements to follow standard designs, definitive designs, or recently completed designs of similar facilities?

- c. Is fast-track design and construction

planned; if so how would fast-tracking affect cost and schedule (risks)?

**d.** Are there special technical aspects of the project that would enhance or preclude the use of design-build, e.g., environmental issues associated with the project site, the applicability of requirements for an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, or any other environment-related requirements?

**6.** For Civil Works projects, selection of design-build will normally only be appropriate for simple projects with a short construction period, and where full funding is available at

the award of the contract.

**a.** Examples of buildings where design-build is likely to be most appropriate are visitor centers, recreational facilities and similar buildings.

**b.** When a project funding is shared, coordination to ensure commitment of the funds (for the design-build portion of the civil works project) is extremely important. The funds necessary for the design-build portion of the project are required in advance of advertising the RFP. Guidance in this issue is available from CECW-P; funding is critical in obtaining approval to use design-build procedures.